IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.4247 of 2007

Date of Decision: August 21, 2007

Gajja Singh and others .....Petitioners

Versus

Kulwant Singh and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.SP Garg, Advocate for the petitioners.

S. D. ANAND, J.

This petition is directed against order dated 1.8.2007, vide which the learned Additional Civil Judge (Senior Division), Moga (hereinafter referred to "Trial Court") negatived a plea preferred by the defendant-petitioners under Order 6 rule 17 read with Section 151 of the Code of Civil Procedure for leave of the Court to amend the written statement.

In the suit filed by the plaintiff-respondents, for the recovery of Rs.2,30,840/- on the basis of pronote and receipt dated 6.6.1996, the defendant-petitioners had raised a plea of denial in the context of the execution of impugned pronote and receipt. The plea taken up in the written statement was that the pronote and receipt are an act of fraud played upon them by the plaintiff-respondents.

Through the proposed amendment, the defendant-petitioners wanted to add the following paras:

> "The real facts are that Mehar Singh who was the grand father of the answering defendants had taken some loan from the plaintiff, which was yet to be repaid when Mehar Singh died. Thereupon the plaintiff forced Nachhattar Singh (father of the answering defendants) to alienate the entire parcel of 7 kanals 15 marlas of land which had come to him as his share from the estate of Mehar Singh, by way of a registered sale deed, in lieu of his contribution towards the repayment of the debt of Mehar Singh. The plaintiff-Buta Singh might have obtained the thumb impression of Nachhattar Singh deceased at that very time, because S.Nachhattar Singh was totally illiterate and a simpleton. Thereafter, plaintiff-Buta Singh got prepared two forged and fabricated pronotes and receipts bearing the same date i.e. 6.6.1996, one in favour of Kulwant Singh, his son and other in his own favour and filed two separate cases.
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> The plaintiff who is son of said Buta Singh is himself an employee in a bank. Under the conduct rules of the banking he is nor permitted to lend money to any person on interest and to run a parallel banking. Moreover, the said Kulwant Singh is not a permanent resident of village Manuke. He was neither born in this village, nor he studied there, nor he ever resided for any long time in the said village. Therefore, there was no occasion for the said Kulwant Singh to have any relation for developing any confidence in him to lend a huge amount to Nachhattar Singh.
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> It is further submitted that two (2) pronotes and

receipts have the same date of alleged transaction i.e. 6.6.96 and the marginal witnesses and scribe of the said pronotes and receipts are also same.

In view of the facts, the alleged pronotes and receipts are forced and fabricated documents and are without consideration. Further the answering defendants have not inherited any estate on the death of Nachhattar Singh because land measuirng 7 kanals 15 marlas mutated in favour of Nachhattar Singh was since transferred in favour of the plaintiff vide registered sale deed referred above."

Likewise, the last indicated para was also to be added in para 3 (on merits) of the written statement.

Concededly, the Civil Suit under reference was filed by the plaintiff-respondents on 4.4.1995. The written statement came to be filed immediately thereafter. The evidence of the parties including the evidence in rebuttal already stands concluded and the matter is at the stage of hearing final arguments. It is at this stage that the above indicated application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure came to be filed by the defendant-petitioners. Apart from this fact, what weighed with the learned Trial Court was that the proposed amendment consisted of certain facts which were to the notice of the defendant-petitioners from the very beginning of the trial and there was no reason why the preferring of filing of amended plea had been delayed.

Apart from the above facts noticed by the learned Trial Court, it may be noted that the evidence of the defendant-petitioners

was once closed by the orders of the Court on 1.10.2005. However, a review plea filed by the defendant-petitioners was allowed and it was thereafter that they closed the evidence on 8.11.2005.

It is, thus, apparent that the defendant-petitioners have been thoroughly remiss in the defence of the suit. The facts forming the basis of the amendment plea were to the notice of the defendant-petitioners from the very beginning. In that view of things, the application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure would appear to be inordinately and unexplainably delayed. The allowance thereof would amount to the holding of the virtual de novo trial.

The reliance placed by the learned counsel for the petitioners upon Usha Balashaheb Swami & others Versus Kiran Appaso Swami and others, 2007(2) RCR (Civil) 830 is mis-conceived as there is no commonness of the facts involved in that case and the facts before this Court.

The petition is held to be completely bereft of merit and is ordered to be dismissed.

(S. D. ANAND)
JUDGE

August 21, 2007
SRM